

**IN THE GENERAL DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE**

[2026] SGHC 68

Originating Application No 802 of 2025

Between

DTM

... Applicant

And

DTN

... Respondent

JUDGMENT

[Arbitration — Award — Recourse against award — Setting aside]
[Arbitration — Award — Recourse against award — Remission]

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DTM

v

DTN

[2026] SGHC 68

General Division of the High Court — Originating Application No 802 of 2025

Dedar Singh Gill J

28 January 2026

30 March 2026

Judgment reserved.

Dedar Singh Gill J:

1 This is an application to set aside an award (“Award”) pursuant to s 24(b) of the International Arbitration Act 1994 (“IAA”). The Award was issued in an arbitration commenced by the respondent (“Arbitration Proceedings”). The applicant alleges a breach of natural justice by the arbitral tribunal that heard the Arbitration Proceedings (“Arbitral Tribunal”). In the alternative, the applicant seeks a remission of the Award to the Arbitral Tribunal under Art 34(4) of the UNCITRAL Model Law on International Commercial Arbitration (“Model Law”). For the reasons that follow, I dismiss the application.

Facts

The parties' contract

2 The applicant is a company that manufactures, trades and exports products used in the steel industry, including iron ore fines.¹

3 The respondent is a company in the business of commodity trading and purchases iron ore from [Country X] for onward sale to buyers in [Country Y].²

4 On 19 December 2023, the respondent contracted to purchase 55,000 wet metric tonnes (“WMT”) of iron ore fines containing 56% iron content or 55% iron content at minimum from the applicant (“Contract”).³ The loading port was in [Country X] and the discharge port was in [Country Y].⁴

5 Under the Contract, the stated base price of the iron ore fines ranged from US\$95 to US\$96 per dry metric tonne (“DMT”).⁵ The base price would be adjusted in the event that the iron content, impurities or physical specifications of the delivered iron ore fines deviated from the contractual specifications.⁶ Additionally, the respondent had the right to renegotiate the price of the iron ore fines should the iron content fall below 54%.⁷

¹ 1st Affidavit by [B] filed on behalf of the applicant on 28 July 2025 (“1st Affidavit by [B]”) at para 1.

² 1st Affidavit by [B] at para 7.

³ 1st Affidavit by [B] at para 8.

⁴ 1st Affidavit by [B] at Tab 2, p 72.

⁵ 1st Affidavit by [B] at Tab 2, p 72.

⁶ 1st Affidavit by [B] at para 11; Tab 2, pp 73–74.

⁷ 1st Affidavit by [B] at Tab 2, p 73.

6 The Contract also stipulated that the respondent was to provide provisional payment of 96% of the cargo value to the applicant, with the balance 4% payment due after the final invoice was issued.⁸

7 Clause 9 of the Contract provided for the following inspection process (“Clause 9”):⁹

(a) At the loading port, the applicant was to appoint an inspection agency nominated by the respondent, [Company D], to determine the iron content in the shipment and provide a certificate for the same (“[Company D]’s Certificate”).¹⁰

(b) Next, at the discharge port, the government inspection authority of [Country Y] (“Inspection Authority”) was to sample from the shipment and divide the sample into three parts, that is, for the applicant, the respondent, and for a third-party company to conduct an “umpire analysis”.¹¹ The Inspection Authority was to provide a certificate detailing its analysis (“Inspection Authority’s Certificate”).¹² The respondent was to allow an inspection agency appointed by the applicant, [Company E], to witness the sampling, chemical analysis and moisture determination jointly with the Inspection Authority (“Joint Sampling”).¹³

⁸ 1st Affidavit by [B] at Tab 2, p 74.

⁹ 1st Affidavit by [B] at Tab 2, p 76.

¹⁰ 1st Affidavit by [B] at para 12(a).

¹¹ 1st Affidavit by [B] at para 12(b).

¹² 1st Affidavit by [B] at Tab 2, p 76.

¹³ 1st Affidavit by [B] at para 12(c).

8 On 28 December 2023, the parties agreed to an addendum to amend the contracted quantity of iron ores fines to 57,000 WMT.¹⁴

Background to the dispute

9 At the loading port, [Company D] drew samples to ascertain the iron content of the iron ore fines during the different stages of transport.¹⁵ These findings were contained in corresponding certificates of analysis issued by [Company D]:¹⁶

(a) During the loading of iron ore fines into the wagons at the mining site in [Country X], [Company D] assessed that the samples on average contained 54.48% to 56.27% iron content.

(b) When the iron ore fines were unloaded from the wagons, [Company D] found that the samples contained a range of 54.68% to 56.41% iron content.

(c) The iron ore fines were subsequently loaded onto [Vessel F] at the loading port in [Country X] from 3 January 2024 to 8 January 2024. At this juncture, the sampled iron ore fines contained 56.04% iron content.

10 On 26 January 2024, the applicant received a provisional payment of 96% of the cargo value from the respondent, *ie*, US\$4,908,653.99 (“Provisional

¹⁴ 1st Affidavit by [B] at para 10.

¹⁵ 1st Affidavit by [B] at para 13.

¹⁶ 1st Affidavit by [B] at para 13.

Payment”).¹⁷ The outstanding amount to be paid under the provisional invoice was US\$202,057.69 (“Provisional Invoice”).¹⁸

11 After [Vessel F]’s arrival at the discharge port in [Country Y], the unloading of the iron ore fines was completed on 28 January 2024.¹⁹

12 According to the applicant, [Company E] faced various issues in conducting the Joint Sampling:²⁰

(a) The Inspection Authority conducted the sample preparation on 30 January 2024. Yet [Company E] only obtained a sample of the iron ore fines on 5 February 2024.

(b) [Company E] was not permitted to take samples and was only allowed to witness the Inspection Authority retrieve samples from a distance of five to ten meters.

13 Thereafter, the Inspection Authority’s Certificate dated 5 February 2024 indicated that the samples drawn by the Inspection Authority contained only 52.21% iron content.²¹ Accordingly, there was a discrepancy in the iron content stated in [Company D]’s Certificate and the Inspection Authority’s Certificate. This resulted in a series of exchanges between the parties:

¹⁷ 1st Affidavit by [B] at para 14.

¹⁸ 1st Affidavit by [B] at para 14.

¹⁹ 1st Affidavit by [B] at para 15.

²⁰ 1st Affidavit by [B] at para 16.

²¹ 1st Affidavit by [B] at Tab 11, p 124.

(a) The applicant expressed its shock at the results of the Inspection Authority’s Certificate and proposed a resampling and reinspection of the iron content.²²

(b) In response, the respondent declared that it was rejecting the iron ore fines as the iron content fell below 54% and demanded a refund of the Provisional Payment.²³

(c) The applicant repeated its suggestion to resample the iron content.²⁴

(d) The applicant also arranged for another testing agency, [Company G] to conduct an analysis of the sample retained by [Company D], which found that the iron content was 56.38%.²⁵

14 Eventually, the applicant and respondent agreed to enter into a second addendum dated 6 March 2024 (“Addendum No 2”) to appoint [Company H] as a third umpire to resample and reinspect the iron content of the iron ore fines.²⁶ Addendum No 2 provided, *inter alia*, that:

(a) [Company H]’s findings relating to, amongst others, the iron content would be deemed final.²⁷

²² 1st Affidavit by [B] at Tab 12, p 127.

²³ 1st Affidavit by [B] at Tab 12, p 129.

²⁴ 1st Affidavit by [B] at Tab 12, p 130.

²⁵ 1st Affidavit by [B] at para 20; at Tab 13, p 132.

²⁶ 1st Affidavit by [B] at para 21; Respondent’s Written Submissions dated 21 January 2026 (“RWS”) at paras 7–9.

²⁷ 1st Affidavit by [B] at Tab 14, p 136 para 2.

(b) In so far as the inspection results in the Inspection Authority's Certificate concerned the iron ore fines' moisture content, size and weight, these determinations would also be deemed final.²⁸

(c) In the event that [Company H] assesses that the iron content was between 52% and 53%, the final price would be fixed based on the prevailing market price in [Country Y] for iron ore fines with 52% to 53% iron content originating from [Country X] ("Price Settlement Clause").²⁹

(d) The remaining unaltered terms of the Contract would continue to be binding but Addendum No 2 would prevail over any other clause in the Contract that conflicted with it.³⁰

15 [Company H] found that the sample tested contained an average 52.60% iron content and produced a report dated 30 April 2024 ("[Company H]'s Certificate").³¹

16 On 25 May 2024, the respondent informed the applicant that the prevailing market price for the cargo was US\$56 per DMT pursuant to the Price Settlement Clause.³² The respondent thus demanded a refund of US\$2,001,404.58 from the Provisional Payment, which, it said, was overpaid.³³

²⁸ 1st Affidavit by [B] at Tab 14, p 136 para 2.

²⁹ 1st Affidavit by [B] at para 21; Tab 14, p 137 para 5B.

³⁰ 1st Affidavit by [B] at Tab 14, p 137 at para 5.

³¹ 1st Affidavit by [B] at para 22; Tab 15, p 140.

³² 1st Affidavit by [B] at Tab 1, p 49 para 82.

³³ 1st Affidavit by [B] at Tab 1, p 49 para 82.

As the matter was unresolved, the respondent, on 4 July 2024, commenced the Arbitration Proceedings pursuant to the Contract’s arbitration clause.³⁴

The Arbitration Proceedings

17 The Singapore-seated Arbitration Proceedings were conducted by a single arbitrator and pursuant to the Singapore International Arbitration Centre Rules (6th Edition, 1 August 2016) (“SIAC Rules”).³⁵

18 The Arbitral Tribunal issued a procedural order dated 29 October 2024 detailing directions regarding the conduct of the Arbitration Proceedings including the process of calling witnesses and requesting documents (“First Procedural Order”).³⁶ In a subsequent procedural order issued on 2 January 2025, the Arbitral Tribunal rejected the following requests by the applicant without reasons (“Second Procedural Order”):³⁷

(a) The applicant’s request for “[c]omplete details ... of the cargo, vessel name, buyer, quantity, grade and price” of the transactions entered into by the respondent and/or its associated companies relating to shipments from [Country X] from December 2023 to 30 April 2024 (“Request for Data on Transactions”).³⁸

(b) The applicant requested for the respondent to produce documents to show the chain of custody of the cargo on board [Vessel

³⁴ 1st Affidavit by [B] at para 23; Tab 2, pp 79–80.

³⁵ 1st Affidavit by [B] at Tab 1, p 33; Tab 2, p 79.

³⁶ 1st Affidavit by [B] at Tab 23, pp 343–352.

³⁷ 1st Affidavit by [B] at Tab 1, p 41 para 24.

³⁸ 1st Affidavit by [B] at Tab 18, pp 182–184.

F] from December 2023 to 30 April 2024 (“Request for Chain of Custody Documents”).³⁹

19 The only factual witnesses called on behalf of the applicant and respondent respectively were [B], a director of the applicant, and [C], the managing director of the respondent.⁴⁰ Neither party called expert evidence.⁴¹ The applicant waived its right to cross-examine [C].⁴² Consequently, [C]’s witness statements and oral testimony were admitted into evidence unchallenged.⁴³

20 In the Arbitration Proceedings, the parties’ pleaded positions were as follows:

(a) The respondent’s case was that, based on the Inspection Authority’s Certificate, the applicant had failed to supply contractually compliant iron ore fines.⁴⁴ Parties had then agreed to enter into Addendum No 2 which deemed [Company H]’s findings upon the resampling of the cargo as final.⁴⁵ Relying on [Company H]’s Certificate, the respondent stated that the iron content of the delivered cargo was 52.60%.⁴⁶ Pursuant to the Price Settlement Clause, the

³⁹ 1st Affidavit by [B] at Tab 18, pp 185–186.

⁴⁰ 1st Affidavit by [B] at para 1 and Tab 1, p 41 para 30; Affidavit by [C] filed on behalf of the respondent on 10 November 2025 (“Affidavit by [C]”) at para 1.

⁴¹ 1st Affidavit by [B] at Tab 1, p 56 para 127.

⁴² 1st Affidavit by [B] at Tab 1, p 41 para 31.

⁴³ 1st Affidavit by [B] at Tab 1, p 41 para 31; p 63 at para 168.

⁴⁴ 1st Affidavit by [B] at Tab 1, p 49 para 83; RWS at para 8.

⁴⁵ 1st Affidavit by [B] at Tab 1, p 49 para 83; RWS at para 9.

⁴⁶ 1st Affidavit by [B] at Tab 1, p 49 para 84.

respondent claimed that it was entitled to a refund of US\$2,001,404.58 from the Provisional Payment or such other amount as assessed by the Arbitral Tribunal.⁴⁷

(b) In its defence, the applicant took the position that Addendum No 2 was not enforceable as it was procured under economic duress.⁴⁸ The applicant also contended that the Inspection Authority's Certificate was not binding on parties as the contractually agreed testing protocols were not adhered to.⁴⁹ Further, the applicant alleged that even if Addendum No 2 was binding, the Price Settlement Clause was unenforceable as it was a penalty clause.⁵⁰ Finally, the applicant counterclaimed for the outstanding sum of US\$200,000 under the Provisional Invoice.⁵¹

21 The Arbitral Tribunal issued the Award on 28 April 2025, awarding US\$2,044,861.65 to the respondent.⁵² The Arbitral Tribunal made the following key findings:

(a) The applicant's argument that Addendum No 2 was procured under economic duress was rejected.⁵³ Addendum No 2 was legally

⁴⁷ 1st Affidavit by [B] at Tab 1, p 49 para 85.

⁴⁸ 1st Affidavit by [B] at Tab 1, p 50 paras 89–90.

⁴⁹ 1st Affidavit by [B] at Tab 1, p 50 para 93.

⁵⁰ 1st Affidavit by [B] at Tab 1, p 51 para 95; RWS at para 10.

⁵¹ 1st Affidavit by [B] at Tab 1, p 51 para 98.

⁵² 1st Affidavit by [B] at Tab 1, p 70 para 202(b).

⁵³ 1st Affidavit by [B] at Tab 1, p 55 para 117.

binding on both parties.⁵⁴ Parties were thereby bound by the findings in [Company H]’s Certificate.⁵⁵

(b) The Price Settlement Clause was not a penalty clause.⁵⁶

(c) The applicant was in breach of the Contract for failing to supply iron ore fines matching the contractual specifications.⁵⁷

(d) The respondent was entitled to a refund of US\$2,044,861.65 from its Provisional Payment.⁵⁸ This amount was determined in the following manner. Neither party adduced expert evidence regarding the prevailing market price in Country Y for iron ore fines with 52.60% iron content.⁵⁹ [C] had put forward four transactions for the sale of iron ore that were concluded on or about April and May 2024 between third parties.⁶⁰ Eventually, the Arbitral Tribunal found that the prevailing market price was US\$56 per DMT.⁶¹ The Arbitral Tribunal had relied on the sale price of the contract between [Company J] and [Company K] which was concluded after the respondent had sold the iron ore fines to [Company J] as indicative evidence of the prevailing market price on 30 April 2024, which was used to calculate the amount to be refunded.⁶²

⁵⁴ 1st Affidavit by [B] at Tab 1, p 55 para 117.

⁵⁵ 1st Affidavit by [B] at Tab 1, p 65 para 178.

⁵⁶ 1st Affidavit by [B] at Tab 1, p 56 para 125.

⁵⁷ 1st Affidavit by [B] at Tab 1, p 65 para 179.

⁵⁸ 1st Affidavit by [B] at Tab 1, p 70 para 202(b).

⁵⁹ 1st Affidavit by [B] at Tab 1, p 56 para 127.

⁶⁰ 1st Affidavit by [B] at Tab 1, pp 62–63 paras 161–167.

⁶¹ 1st Affidavit by [B] at Tab 1, p 65 para 176.

⁶² 1st Affidavit by [B] at Tab 1, p 63 para 162 and p 64 para 171.

(e) The applicant’s counterclaim for the outstanding payment under the Provisional Invoice was dismissed since the Arbitral Tribunal found that the applicant was in breach of the Contract.⁶³

The parties’ cases

The applicant’s case

22 [B] filed an affidavit in support of the present application.

23 The applicant’s primary case is that the Award should be set aside due to a breach of natural justice.⁶⁴ The applicant relies on three main arguments that, it says, each independently amount to a breach of natural justice.⁶⁵

24 First, the Arbitral Tribunal failed to determine the applicant’s pleaded defence that the respondent could not rely on Addendum No 2 or [Company H]’s Certificate due to the respondent’s breach of Clause 9 of the Contract.⁶⁶ According to the applicant, the Arbitral Tribunal did not consider how its finding that Addendum No 2 was legally enforceable interacted with or displaced Clause 9.⁶⁷ Had the Arbitral Tribunal determined Clause 9 in the applicant’s favour, [Company D]’s Certificate would have been binding and the Arbitral Tribunal’s subsequent findings on the applicant’s breach and computation of the refund would have differed.⁶⁸

⁶³ 1st Affidavit by [B] at Tab 1, p 66 paras 182–183.

⁶⁴ Applicant’s Written Submissions dated 21 January 2026 (“AWS”) at para 3.

⁶⁵ Minute Sheet of Hearing dated 28 January 2026 (“Minute Sheet”) at p 2.

⁶⁶ AWS at para 29.

⁶⁷ AWS at para 32.

⁶⁸ AWS at para 36.

25 Second, the applicant submits that the Arbitral Tribunal had denied it of a reasonable opportunity to present its case on the chain of custody of the iron ore fines which affected the reliability of the findings by the Inspection Authority and [Company H].⁶⁹ The Arbitral Tribunal's rejection of the applicant's Request for Chain of Custody Documents prevented the applicant from particularising its concerns regarding the chain of custody of the iron ore fines.⁷⁰

26 Third, the applicant avers that the Arbitral Tribunal's denial of its Request for Data on Transactions had precluded access to the respondent's contemporaneous comparable transactions.⁷¹ In turn, this deprived the applicant of a fair opportunity to prove the prevailing market price.⁷² The applicant also argues that even if expert evidence was led, the difficulties caused by the rejection of its Request for Data on Transactions would not have been overcome.⁷³ Overall, the applicant opines that there was a reasonable possibility that the Arbitral Tribunal would have adopted a different market price, affecting the Award.⁷⁴

27 In the alternative, the applicant asserts that the Award should be remitted to the Arbitral Tribunal to eliminate the grounds for setting aside.⁷⁵ Upon remission, the applicant posits that the Arbitral Tribunal could determine the

⁶⁹ AWS at para 37.

⁷⁰ AWS at para 37(b).

⁷¹ AWS at paras 54 and 58.

⁷² AWS at paras 54 and 58.

⁷³ AWS at para 60.

⁷⁴ AWS at para 63.

⁷⁵ AWS at paras 3 and 64.

applicant's defence under Clause 9, consider the chain of custody issue and reconsider the market price determination.⁷⁶

The respondent's case

28 [C] filed an affidavit on the respondent's behalf to resist the present application.

29 The respondent submits that the Arbitral Tribunal had applied its mind to the arguments canvassed by both parties.⁷⁷ According to the respondent, the application, in substance, challenges the merits of the Arbitral Tribunal's decision.⁷⁸

30 In response to the applicant's argument that the Arbitral Tribunal failed to consider the effect of Clause 9, the respondent argues that this issue was rendered moot since the Arbitral Tribunal found that Addendum No 2 was legally enforceable.⁷⁹ Addendum No 2 states that it would prevail in the event of any conflict with any other clause of the Contract.⁸⁰ The respondent submits that the applicant's arguments on Clause 9 need not be expressly addressed in the Award.⁸¹

31 Regarding the chain of custody issue, the respondent emphasises that the applicant had not raised such issues at the material time when the samples were

⁷⁶ AWS at para 64.

⁷⁷ RWS at para 24.

⁷⁸ RWS at para 28.

⁷⁹ RWS at para 43.

⁸⁰ RWS at para 35.

⁸¹ RWS at para 44.

collected.⁸² The respondent argues that the chain of custody issue was not “pleaded or argued” by the applicant during the Arbitration Proceedings.⁸³ Moreover, the respondent avers that it was well within the Arbitral Tribunal’s discretion to reject disclosure requests.⁸⁴

32 On the issue of the prevailing market price, the respondent submits that the applicant was afforded the opportunity to challenge the evidence put forward by [C] but chose not to.⁸⁵ Further, the respondent says that the Arbitral Tribunal was entitled to rely on the transaction between [Company J] and [Company K] as a baseline to determine the prevailing market price.⁸⁶

The issue to be determined

33 The crux of the application turns on whether there has been a breach of natural justice in the making of the Award. In this regard, the applicant raises three main arguments that, it claims, amounted to a breach of natural justice (see [24]–[26] above):

- (a) First, the Arbitral Tribunal failed to determine the applicant’s pleaded defence that the respondent had breached Clause 9.
- (b) Second, the Arbitral Tribunal denied the applicant of a reasonable opportunity to present its case on the chain of custody of the iron ore fines.

⁸² RWS at para 53.

⁸³ RWS at para 53.

⁸⁴ RWS at para 53.

⁸⁵ RWS at para 59.

⁸⁶ RWS at paras 61–62.

(c) Third, the applicant was deprived of a reasonable chance to present its case on the prevailing market price of the iron ore fines that was used to determine the amount to be refunded to the respondent.

34 Should I find that a breach of natural justice had occurred, it would be incumbent on me to consider whether the Award should be set aside or, in the alternative, be remitted to the Arbitral Tribunal.

Whether a breach of natural justice occurred

35 It is trite that the court's role in a setting aside application is not to interfere with the merits of an arbitral award: *AKN v ALC* [2015] 3 SLR 488 ("*AKN*") at [37]. Parties to an arbitration do not have a right to a "correct" decision from the arbitral tribunal, but a right to a decision within the ambit of their consent to have their dispute arbitrated that is arrived at using a fair process: *AKN* at [38]. Hence, the grounds for curial intervention generally concern process failures that are unfair and prejudice the parties: *AKN* at [38].

36 One of the avenues where the court may intervene is when a breach of the rules of natural justice has been occasioned. Section 24(b) of the IAA states that an award of the arbitral tribunal may be set aside if "a breach of the rules of natural justice occurred in connection with the making of the award by which the rights of any party have been prejudiced."

37 To satisfy s 24(b) of the IAA, the applicant must prove: (a) the rule of natural justice breached; (b) how it was breached; (c) the way the breach was connected to the making of the award; and (d) how the breach prejudiced its rights: *Soh Beng Tee & Co Pte Ltd v Fairmount Development Pte Ltd* [2007] 3 SLR(R) 86 ("*Soh Beng Tee*") at [29]. A breach of natural justice causes actual or real prejudice if complying with the rules of natural justice could reasonably

have made a difference to the outcome of the arbitration: *BZW v BZV* [2022] 1 SLR 1080 (“*BZW*”) at [63].

38 The applicant relies on the right to a fair hearing as the relevant rule of natural justice that was breached.⁸⁷ This rule requires that a tribunal pays heed to what is put before it and gives a reasoned decision based on the arguments and evidence presented: *BZW* at [56]. The right to a fair hearing may be contravened in the following non-exhaustive ways (*BZW* at [60]):

(a) A tribunal fails to apply its mind to the essential issues arising from the parties’ arguments.

(b) The chain of reasoning adopted in the arbitral tribunal’s award was one which the parties lacked reasonable notice that the tribunal could adopt or one without sufficient nexus to the parties’ arguments.

39 I turn to consider each of the three arguments that the applicant relies on to mount its case that its right to a fair hearing was impinged upon (see [33] above).

Effect of Clause 9 of the Contract

40 The applicant argues that the Arbitral Tribunal’s failure to address its pleaded defence of the respondent’s alleged breach of Clause 9 contravened the fair hearing rule.⁸⁸ According to the applicant, the Arbitral Tribunal did not determine whether the respondent had breached Clause 9, whether any such breach was waived by the applicant and whether Addendum No 2 displaced the

⁸⁷ AWS at para 27.

⁸⁸ AWS at para 28.

testing regime under Clause 9.⁸⁹ Consequently, the applicant maintains that its pleaded defence *vis-à-vis* Clause 9 remains unaddressed.

41 In this application, the applicant does not contest the Arbitral Tribunal's finding that Addendum No 2 was legally enforceable.⁹⁰ The applicant nonetheless maintains that despite the enforceability of Addendum No 2, parameters such as the moisture, size and weight of the iron ore fines would still be derived from the Inspection Authority's Certificate to determine the refund price.⁹¹ Hence, the applicant's view is that the testing protocols in Clause 9 would still come to the fore to determine whether the Inspection Authority's Certificate was binding.⁹²

42 The respondent submits that the Arbitral Tribunal's determination that Addendum No 2 was legally enforceable rendered the issue of Clause 9 moot which thus need not be expressly addressed in the Award.⁹³ This was because the effect of Addendum No 2 was to prevail over other clauses in the Contract that it may be in conflict with.⁹⁴ The respondent thus argues that the applicant's reliance on Clause 9 would only come into play had the Arbitral Tribunal found that Addendum No 2 was not binding.⁹⁵ Overall, the respondent asserts that the Award was based on a chain of reasoning that directly flowed from parties' arguments.⁹⁶

⁸⁹ AWS at para 31.

⁹⁰ Minute Sheet at p 4.

⁹¹ Minute Sheet at pp 3–4.

⁹² Minute Sheet at p 4.

⁹³ RWS at para 44.

⁹⁴ RWS at para 35.

⁹⁵ RWS at para 40.

⁹⁶ RWS at para 46.

43 I reproduce the salient terms of Addendum No 2:⁹⁷

Both [the applicant and respondent] agreed that the results of contents showing in [[Company H]’s Certificate] should be deemed as final results. The *[iron content] ... based on [[Company H]’s Certificate] shall be as Final, and other inspection results (including Moisture content, Size and Weight) based on [the Inspection Authority’s Certificate] shall be as final.*

...

[The applicant and respondent] hereby reaffirm the remaining unaltered terms and conditions of the original Contract, which shall remain valid and binding. If any other Clause in the original contract is in conflict with [Addendum No 2], *[Addendum No 2] should be prevailing.*

[emphasis added]

44 While an arbitral tribunal must apply its mind to the essential issues of the dispute, it is not obliged to deal with every argument raised by parties: *TMM Division Maritima SA de CV v Pacific Richfield Marine Pte Ltd* [2013] 4 SLR 972 (“*TMM*”) at [72]; *BZW* at [60(a)]. The fact that an award fails to expressly address one of the parties’ arguments, without more, does not indicate that the arbitral tribunal failed to apply its mind to an essential issue: *BZW* at [60(a)]. The tribunal is accorded fair latitude to determine what is essential: *BZW* at [60(a)]. In determining the essential issues, the arbitral tribunal also need not deal with every argument canvassed under each of the essential issues: *TMM* at [73].

45 Moreover, an arbitral tribunal may implicitly resolve an issue that has been rendered moot because of its determination of a logically antecedent issue. This principle was underscored in *TMM* at [77]:

It should be emphasised that an issue need not be addressed expressly in an award; *it may be implicitly resolved*. Resolving an issue does not have to entail navigating through all the

⁹⁷ 1st Affidavit by [B] at Tab 14, p 136 para 2 and p 137.

arguments and evidence. If the *outcome of certain issues flows from the conclusion of a specific logically prior issue*, the arbitral tribunal may *dispense with delving into the merits of the arguments and evidence for the former*. Using a claim in tort as an example, if the arbitral tribunal has found that there is no duty of care, it follows of course that there can be no breach of a duty of care and consequently, damages. The arbitral tribunal is not obliged to pursue a moot issue and consider the merits of either the standard of care or the claim for damages.

[emphasis added]

46 Ultimately, the central inquiry is whether the award reflected the fact that the arbitral tribunal had applied its mind to the critical issues and arguments: *TMM* at [90]. I am satisfied that this was the case.

47 It appears to me that the Arbitral Tribunal had in fact taken notice of the issues in conducting the Joint Sampling and Clause 9 as raised by the applicant.

48 First, the respondent points out how it had pleaded the irrelevance of Clause 9 during the Arbitration Proceedings:⁹⁸

67. The [applicant] raises an issue about (a) not being allowed to participate in the [Inspection Authority's] sampling; and (b) refusal by the [respondent] to agree to resampling of the Cargo.

68. Firstly, given that [the applicant and respondent] executed [Addendum No 2] agreeing to be bound by [[Company H]'s Certificate] means that *objections raised to the [Inspection Authority's] sampling are now moot*, having been overtaken by subsequent events, in a manner of speaking.

[emphasis in original omitted; emphasis added in italics]

49 Second, it is also material that the Arbitral Tribunal was cognisant of the factual premises raised by the applicant *vis-à-vis* the issues in conducting the

⁹⁸ RWS at para 43; 1st Affidavit by [B] at Tab 20, p 255 paras 67–68.

Joint Sampling (at [12] above). This is apparent from how the Arbitral Tribunal included the said issues when setting out the facts of the dispute:⁹⁹

61. Although [Company E] was appointed to conduct a joint survey, [Company E] reported that they were not permitted to get close to take samples at the quayside. In an email dated 31 January 2024 from [Company E], [Company E] said that [the Inspection Authority] took samples in the grabs during the discharge operations. According to [Company E], third party inspection companies were not permitted to enter the quayside for sampling but were permitted to witness the sampling by [the Inspection Authority] some 5 to 10 metres away at the quayside.

62. It appears that [Company E] was permitted by [the Inspection Authority] to witness the sample preparation in the [Inspection Authority's] laboratory but was not permitted to take photos or record the data.

63. In an email dated 8 February 2024 from [Company E] to the [applicant], [Company E] said that they received the [Inspection Authority's] samples on 5 February 2024 from [the Inspection Authority], which was not the same day when the samples were taken. [Company E] tested the samples in their laboratory and the results were similar to the [Inspection Authority's] Certificate. [Company E] suggested that the [applicant] should liaise with the end buyers for a re-sampling of the cargo.

50 After setting out the applicant's challenges in conducting the Joint Sampling, the Arbitral Tribunal described how parties corresponded to resolve the applicant's issues with the Inspection Authority's Certificate.¹⁰⁰ The Arbitral Tribunal noted that the parties eventually agreed to Addendum No 2 whereby the final price of the iron ore fines would be based on [Company H]'s Certificate which was deemed final and conclusive.¹⁰¹

⁹⁹ 1st Affidavit by [B] at Tab 1, p 46 paras 61–63.

¹⁰⁰ 1st Affidavit by [B] at Tab 1, pp 46–47 paras 64–67.

¹⁰¹ 1st Affidavit by [B] at Tab 1, p 47 paras 68–70.

51 Third, the Arbitral Tribunal also noted the applicant’s arguments on Clause 9 when summarising the applicant’s case:¹⁰²

93. The [applicant] also argued that the joint survey at the load port was *not in accordance with the procedures set out in the Contract*. [Company E] was not permitted to take samples during the discharge process and was only permitted to observe from a distance.

...

96. In response to the [respondent]’s alternative case for damages, the [applicant] argues that the [Inspection Authority]’s Certificate *cannot be relied upon* as the contractual safeguards were not complied with.

[emphasis added]

52 The matters I have set out at [48]–[51] above were thus within the Arbitral Tribunal’s contemplation. Consequently, as the respondent says, the relevance of Clause 9 would have been something that the Arbitral Tribunal considered and applied its mind to.¹⁰³ Ultimately, the Arbitral Tribunal applied its mind to what it determined to be the essential issue of the dispute, *ie*, the enforceability of Addendum No 2. While the applicant may view the effect of Clause 9 as its “primary and dispositive defence to liability and quantum”,¹⁰⁴ it is ultimately the prerogative of the Arbitral Tribunal to decide which issues were essential for determination: *BZW* at [60(a)]. It thus appears to me that once the Arbitral Tribunal found Addendum No 2 to be legally enforceable, the issue of Clause 9 faded away. The outcome that Clause 9 was not relevant would have flowed from the determination of the logically antecedent issue of Addendum No 2’s validity. This is because Addendum No 2 deemed both [Company H]’s Certificate, and the Inspection Authority’s Certificate *vis-à-vis* the specified

¹⁰² 1st Affidavit by [B] at Tab 1, p 50 para 93 and p 51 para 96.

¹⁰³ Minute Sheet at p 6.

¹⁰⁴ AWS at para 31.

parameters, as final. There was thus no need for the Arbitral Tribunal to expressly discuss Clause 9 when setting out its reasons in the Award. Overall, I am mindful that an issue need not be expressly addressed in the arbitral tribunal's reasoning as it could have been implicitly resolved: *TMM* at [77].

53 I thus find that although the Arbitral Tribunal did not expressly state its reasons regarding the effect of Clause 9 in the Award, this does not, on the facts, amount to a breach of the applicant's right to a fair hearing.

The chain of custody issue

54 The applicant alleges that its right to a fair hearing was infringed as the Arbitral Tribunal denied it of a reasonable opportunity to present its case on the chain of custody of the iron ore fines and the reliability of the findings in the Inspection Authority's Certificate and [Company H]'s Certificate.¹⁰⁵ The applicant relies on the Arbitral Tribunal's rejection of its Request for Chain of Custody Documents in the Second Procedural Order (see [18(b)] above).¹⁰⁶ Without the requested documents, the applicant avers that it could not particularise the chain of custody issues beyond "raising doubts in general terms".¹⁰⁷

55 The respondent argues that the applicant had not raised any challenges to the chain of custody of the iron ore fines at the material time when the samples were collected.¹⁰⁸ Neither was the issue of chain of custody put forth in the

¹⁰⁵ AWS at para 37.

¹⁰⁶ AWS at para 37(b).

¹⁰⁷ AWS at para 51.

¹⁰⁸ RWS at para 53; Affidavit by [C] at paras 13–14.

applicant's pleadings during the Arbitration Proceedings.¹⁰⁹ There was no suggestion that the iron ore fines tested by [Company H] were not the same iron ore fines supplied by the applicant.¹¹⁰

56 In my view, the applicant has not substantiated how it was deprived of a fair opportunity to challenge the chain of custody of the iron ore fines during the Arbitration Proceedings.

57 In matters relating to procedure, the court will accord a margin of deference to an arbitral tribunal as it possesses wide discretion to determine the arbitral procedure: *China Machine New Energy Corp v Jaguar Energy Guatemala LLC* [2020] 1 SLR 695 (“*China Machine New Energy*”) at [103]. There must be a real basis for alleging that the tribunal has conducted the arbitral process irrationally or capriciously, or that the arbitral process was conducted so far removed from what could reasonably be expected that it must be rectified: *China Machine New Energy* at [103]. Additionally, when challenging the exercise of the tribunal's procedural discretion, it cannot be said that the natural justice rules were not complied with if the complaining party had not informed the arbitral tribunal of what, in its view, such compliance required: *China Machine New Energy* at [102]. The alleged unfairness upon which the complaining party bases its claim of breach of natural justice must have been brought to the arbitral tribunal's attention at the relevant time: *China Machine New Energy* at [102]. The court must put itself in the arbitral tribunal's shoes: *China Machine New Energy* at [104(d)]. Accordingly, the arbitral tribunal's decisions can only be assessed by reference to what it had known at the material time: *China Machine New Energy* at [104(d)].

¹⁰⁹ RWS at para 53.

¹¹⁰ RWS at para 53.

58 To begin with, as the applicant accepted, the chain of custody issue was not pleaded in its defence during the Arbitration Proceedings.¹¹¹ At the hearing before me, the applicant submitted that a breach of natural justice could still arise if a party was deprived of a fair chance to prove a factual premise notwithstanding that it had not been pleaded.¹¹² No authority was cited to support this specific proposition, though the applicant urged the court to take a holistic reading of the pleadings and the proceedings.¹¹³

59 The applicant raises the fact that the Arbitral Tribunal had rejected the applicant's Request for Chain of Custody Documents in the Second Procedural Order which deprived it from substantiating its concerns on the iron ore fines' provenance (see [18(b)] above).¹¹⁴ I do not find this argument convincing.

60 It bears highlighting that at the juncture when the Arbitral Tribunal issued the Second Procedural Order, it was privy to the pleadings filed by the parties and the initial witness statements.¹¹⁵

(a) The applicant's pleaded defence and counterclaim made no reference to the chain of custody issue. I note that the applicant points out how it had pleaded that, at about the same time the parties entered into the Contract, the respondent had also purchased iron ore fines with 54% iron content from a third-party to be shipped from [Country X] ("Third-Party Shipment").¹¹⁶ However, the applicant had raised the

¹¹¹ AWS at para 37(e).

¹¹² Minute Sheet at p 5.

¹¹³ Minute Sheet at p 5.

¹¹⁴ AWS at para 37(b).

¹¹⁵ 1st Affidavit by [B] at Tab 1, pp 39–40 para 22.

¹¹⁶ AWS at paras 39 and 47(b)–(c).

Third-Party Shipment during the Arbitration Proceedings in the context of its submission that the respondent had failed to mitigate its losses, and *not* for the purpose of impugning the chain of custody.¹¹⁷ Plainly, the applicant’s challenge *vis-à-vis* the chain of custody of the iron ore fines was not pleaded.

(b) In [B]’s first witness statement, [B] had made a bare assertion that after receiving [Company H]’s Certificate, he had “doubts” on whether the proper chain of custody had been maintained.¹¹⁸ However, it is significant that the applicant failed to formally pursue the chain of custody issue by pleading the aforesaid in its defence and counterclaim that was filed contemporaneously with the [B]’s first witness statement.

61 Ultimately, the Arbitral Tribunal’s decision on whether to allow the Request for Chain of Custody Documents must be viewed in light of the context of the case advanced by the applicant. As the issue of chain of custody was not pleaded by the applicant, naturally, there lacked basis for the Arbitral Tribunal to accede to the Request for Chain of Custody Documents. This point was expressly made to the Arbitral Tribunal by the respondent in its objection to the applicant’s Request for Chain of Custody Documents:¹¹⁹

The [respondent] objects to this request.

...

2. *It is not the [applicant’s] case that the cargo which [Company H] surveyed was not the cargo which was shipped by it. It is also not the [applicant’s] case that the [respondent] (or any other party) substituted the cargo. Thus, the question of*

¹¹⁷ 1st Affidavit by [B] at Tab 20, pp 275–277 paras 28–29 and pp 319–321 paras 23–26.

¹¹⁸ AWS at para 40.

¹¹⁹ 1st Affidavit by [B] at Tab 18, p 185.

'custody' of the cargo is immaterial. Factually, till the [Company H] survey was completed, the Cargo was at [Country Y]'s Port.

[emphasis added]

62 Even if some reference to the chain of custody of the cargo shipment was made subsequently in [C]'s witness statements and [B]'s cross-examination,¹²⁰ the fact remains that the applicant did not pursue this point beyond mere speculation and raising doubt. After the applicant's request for document disclosure was rejected by the Arbitral Tribunal, as the respondent notes, the applicant proceeded with the Arbitration Proceedings without producing evidence to rebut the evidence relied upon by the respondent or cross-examining [C].¹²¹

63 Ultimately, the applicant has not demonstrated any cogent reason that the Arbitral Tribunal's exercise of its discretion in relation to procedural matters was irrational. The applicant merely raises the alleged prejudice caused due to its deprivation of the evidential basis to particularise its provenance concerns.¹²² However, the anterior question of whether the Arbitral Tribunal had acted capriciously in its rejection of the Request for Chain of Custody Documents remains unaddressed. On the face of the record, the applicant made the request which the Arbitral Tribunal considered and rejected.

64 Although the Arbitral Tribunal did not furnish reasons for its procedural decision, the applicant has not explained how the tribunal's omission to give reasons was logically so grave or glaring to result in an inescapable inference that the tribunal did not even attempt to comprehend the essential issues in the

¹²⁰ AWS at paras 47(a)–(b); 1st Affidavit by [B] at Tab 19, p 220.

¹²¹ RWS at para 54.

¹²² AWS at para 51.

arbitration: *CVV v CWB* [2024] 1 SLR 32 (“*CVV*”) at [35]. As the respondent argues, the Arbitral Tribunal’s powers to order disclosure under the r 27(f) of the SIAC Rules is contingent on whether it considers the request relevant to the case and material to the outcome.¹²³ Moreover, I note that the Arbitral Tribunal had set out, *inter alia*, the following guideline in the First Procedural Order to explain the rationale underlying its decision on whether to allow a document production request:¹²⁴

6.3 The request must establish the *relevance and materiality* of each document or of each specific category of documents sought in such a way that the other Party and the Tribunal are able to refer to factual allegations in the pleadings filed by the Parties to date. In other words, the requesting Party must make it clear with reasonable particularity what facts or allegations each document (or category of documents) sought is intended to establish.

[emphasis added]

65 Overall, the applicant has not proven how the Second Procedural Order denied it of a right to a fair hearing. I am thus not satisfied that this basis of challenge amounts to a breach of the applicant’s right to be fairly heard.

The Arbitral Tribunal’s determination of the prevailing market price

66 Pursuant to Addendum No 2 which the Arbitral Tribunal found to be legally enforceable, the Arbitral Tribunal applied the Price Settlement Clause (see [14(c)] above). The respondent had put forward four transactions for the sale of iron ore that were concluded on or about April and May 2024 between third parties.¹²⁵ After considering the four transactions, the Arbitral Tribunal eventually relied on the price of the iron ore fines from the contract between

¹²³ RWS at para 53; Respondent’s Bundle of Authorities dated 21 January 2025 at p 589.

¹²⁴ 1st Affidavit by [B] at Tab 23, p 348.

¹²⁵ 1st Affidavit by [B] at Tab 1, pp 62–63 paras 161–167.

[Company J], the downstream purchaser of the iron ore fines from the respondent, and [Company K] (“Selected Transaction”).¹²⁶ The Arbitral Tribunal found that there was no evidence to suggest that the Selected Transaction was at an undervalue or by way of a distressed sale.¹²⁷ Moreover, the Arbitral Tribunal noted that it would have “preferred the assistance of expert evidence on the issue of market price” or a greater sample size of transactions.¹²⁸

67 The applicant asserts that the Arbitral Tribunal’s rejection of its Request for Data on Transactions in the Second Procedural Order denied it a reasonable opportunity to present its case on the prevailing market price of the iron ore fines (see [18(a)] above).¹²⁹ The lack of reasons in the Second Procedural Order prevented the applicant from refining the scope of the request and access to contemporaneous comparable transactions.¹³⁰ The applicant claims that its Request for Data on Transactions was specific and proportionate as the scope of the request was confined temporally and geographically.¹³¹ However, it is not within my purview to evaluate the merits of the Arbitral Tribunal’s decision in making the Second Procedural Order. The applicant has not shown how the Arbitral Tribunal’s exercise of procedural discretion amounted to an inexorable inference that the tribunal had not attempted to comprehend the essential issues in the arbitration: *CVV* at [35]. In this regard, I repeat my observations at [57] and [64] above in so far as the Second Procedural Order is concerned.

¹²⁶ 1st Affidavit by [B] at Tab 1, p 63 para 162 and p 64 para 171.

¹²⁷ 1st Affidavit by [B] at Tab 1, p 64 para 173.

¹²⁸ 1st Affidavit by [B] at Tab 1, p 65 para 176.

¹²⁹ AWS at para 54.

¹³⁰ AWS at para 58.

¹³¹ AWS at para 57.

68 As the respondent rightly points out, the applicant was afforded ample opportunity to challenge the respondent’s evidence on the prevailing market price but elected not to do so.¹³² It is significant that the applicant chose not to cross-examine [C] on his evidence or introduce expert evidence to opine on the prevailing market price. The Arbitral Tribunal was cognisant of how the applicant had waived its rights to cross-examine [C], which left the evidence on the four transactions put forward by [C] as a reference point of the prevailing market price unchallenged.¹³³ Further, the Arbitral Tribunal stated that it would attach such weight to [C]’s evidence as necessary, notwithstanding that [C]’s evidence was not contested.¹³⁴ The applicant’s explanation is that any cross-examination or expert evidence would not have “cured the handicap” caused by the rejection of its Request for Data on Transactions, as any evidence led would have proceeded on general terms based on proxies and not actual realised prices.¹³⁵

69 It is difficult to accept the applicant’s contention that any cross-examination or expert evidence would not assist in this case. Even if the appointed expert had only proceeded on general terms based on proxies such as market reports or indices, such evidence could have assisted the Arbitral Tribunal who would have “preferred assistance of expert evidence on the issue of market price”.¹³⁶ The applicant had foreclosed the possibility of the utility of expert evidence and cross-examination by proceeding on the assumption that such evidence on general terms would not be helpful. But the relevance of any

¹³² RWS at para 59.

¹³³ 1st Affidavit by [B] at Tab 1, p 63 para 168.

¹³⁴ 1st Affidavit by [B] at Tab 1, p 63 para 168.

¹³⁵ AWS at para 60; Minute Sheet at pp 5–6.

¹³⁶ 1st Affidavit by [B] at Tab 1, p 65 para 176.

such evidence would be one for the Arbitral Tribunal to decide, had the aforesaid been brought before it. It is no excuse for the applicant to now categorically assert that expert evidence or cross-examination would have been of limited effectiveness. The natural consequence of the applicant's failure to lead expert evidence and its election not to cross-examine [C] was that the evidence raised by the respondent remained wholly unchallenged. Having elected to take such a course of action, the applicant must bear the consequences of its failure to rebut the respondent's evidence which the Arbitral Tribunal eventually accepted.

70 Ultimately, the Arbitral Tribunal was faced with "no direct evidence" and therefore decided that the Selected Transaction was "good evidence" of the indicative prevailing market price of the iron ore fines at the material time.¹³⁷ It thus appears to me that the Arbitral Tribunal took a considered view based on the available evidence before it, and this did not amount to a breach of natural justice: *BZW* at [56].

Conclusion on the breach of natural justice issue

Setting aside

71 In my view, the applicant has not proven how natural justice was breached from the three arguments that it raises, *ie*, the effect of Clause 9, the chain of custody issue and the Arbitral Tribunal's determination of the prevailing market price. I thus find no need to further consider whether the purported breach was connected to the making of the Award, or whether the alleged breach prejudiced the applicant (*Soh Beng Tee* at [29]).

¹³⁷ 1st Affidavit by [B] at Tab 1, p 64 paras 170–171.

72 Accordingly, I dismiss the application to set aside the Award based on s 24(b) of the IAA.

Remission

73 Art 34(4) of the Model Law empowers the court to remit an arbitral award to the arbitral tribunal:

Article 34. Application for setting aside as exclusive recourse against arbitral award

...

(4) The court, *when asked to set aside an award*, may, where *appropriate* and so requested by a party, suspend the setting aside proceedings for a period of time determined by it in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the arbitral tribunal's opinion will *eliminate the grounds for setting aside*.

[emphasis in original omitted; emphasis added in italics]

74 The applicant claims that its aforesaid arguments giving rise to the setting aside application, summarised at [33] above, are discrete and capable of being addressed without reopening the arbitration.¹³⁸ It now seeks an opportunity for the Arbitral Tribunal to (a) determine the effect of Clause 9; (b) determine the chain of custody issue; and (c) reconsider the market price determination for iron ore fines as at the material time.¹³⁹

75 Remission is envisaged as an alternative remedy when the court is asked to set aside an award. Instead of setting aside an award, a remission of the award would enable the same arbitral tribunal to cure remediable defects in its award: *BZW* at [65]. This necessarily presupposes an anterior finding that a breach

¹³⁸ AWS at para 66.

¹³⁹ AWS at para 64.

sufficient to establish a basis for setting aside has occurred. As I have rejected the applicant's case to set aside the Award based on a breach of natural justice (see [71]–[72] above), the question of whether remission is appropriate does not arise for my consideration.

Conclusion

76 For the foregoing reasons, I dismiss the present application. I will hear parties on costs separately.

Dedar Singh Gill
Judge of the High Court

Yong Manling Jasmine (Kelvin Chia Partnership) for the
applicant;
Tan Thye Hoe Timothy, Aditya Bhattacharya and Murali Rajagopal
(AsiaLegal LLC) for the respondent.